No. 83-2102

IN THE

Supreme Court of the United States

OCTOBER TERM, 1984

THE STATE OF TEXAS, *et al.*,
Petitioners,

v.

UNITED STATES OF AMERICA, *et al.*,
Respondents.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit

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BRIEF IN OPPOSITION OF RESPONDENT ASSOCIATION OF AMERICAN RAILROADS

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QUESTION PRESENTED

Whether section 214 of the Staggers Rail Act of 1980, which preempts independent state regulation of the intrastate rates of interstate rail carriers, violates the Commerce Clause, the Tenth Amendment, or the Guaranty Clause of the United States Constitution.

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BRIEF IN OPPOSITION OF RESPONDENT ASSOCIATION OF AMERICAN RAILROADS

Respondent Association of American Railroads ("AAR")[1] respectfully requests that this Court deny the petition for writ of certiorari seeking review of the judgment of the United States Court of Appeals for the Fifth Circuit in this case. The opinion below is reported at 730 F.2d 339 (5th Cir. 1984).

STATEMENT OF THE CASE

This case is a challenge to the constitutionality of section 214 of the Staggers Rail Act of 1980, Pub. L. No. 96-448, 94 Stat. 1895 (codified at 49 U.S.C. § 11501 (Supp. V 1981)). In section 214, Congress preempted

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[1] A list of the member railroads of the AAR is printed in the Appendix to this Brief at pages 8a to 15a.

the states' independent authority to regulate the intrastate rates of interstate railroads, but offered the states optional authority to regulate such rates in accordance with federal standards. Petitioners brought suit in the United States District Court for the Western District of Texas, seeking a declaratory judgment that section 214 of the Staggers Act is unconstitutional.[2] The district court, finding petitioners' claims to be meritless, granted summary judgment for respondents. The United States Court of Appeals for the Fifth Circuit unanimously affirmed, relying on recent and unequivocal decisions of this Court in analogous cases.

Section 214 preempts the authority formerly exercised by the states over the intrastate rates of interstate railroads, and provides that a state may continue to regulate such rates and related matters only in accordance with federal standards and procedures. 49 U.S.C. § 11501.[3] Under the Act, the regulatory standards and procedures of states choosing to continue to regulate must be certified by the Interstate Commerce Commission as conforming to federal guidelines. *Id.* § 11501(b). The regulatory decisions of certified states can be reviewed by the ICC where it is alleged that the state authority has failed to follow federal law. *Id.* § 11501(c). The statute

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[2] The suit was originally brought by the State of Texas and Railroad Commission of Texas (hereinafter collectively "Texas"). Subsequently state regulatory commissions from seven other states intervened as plaintiffs, as did the National Association of Regulatory Utility Commissioners ("NARUC"). Only Texas, the Kansas Corporation Commission ("KCC"), and NARUC pursued the case on appeal, and only Texas and the KCC have petitioned this Court for certiorari.

[3] The Act provides:

> "A State authority may only exercise jurisdiction over intrastate transportation [of an interstate rail carrier] if such State authority exercises such jurisdiction exclusively in accordance with the provisions of this subtitle." *Id.* § 11501(b)(1).

makes clear, however, that states are under no compulsion to continue to regulate; those that choose to withdraw from regulation altogether are free to do so. *Id.* § 11501(b)(4).[4] Intrastate rate regulation in those states is then placed under the jurisdiction of the ICC. *Id.*[5]

The legislative history makes clear that Congress enacted section 214 to ensure that the obstacles inherent in independent state regulation did not frustrate Congress' overall effort in the Staggers Act to achieve a measure of deregulation with respect to railroad rates.[6] In its

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[4] At least sixteen states have voluntarily withdrawn from rate regulation. Ex Parte No. 388, *State Intrastate Rail Rate Authority —P.L. 96-448*, 365 I.C.C. 855, 855 n.1 (1982), *modified*, 367 I.C.C. 149 (1983); Ex Parte No. 388 (Sub-No. 37), *State Intrastate Rail Rate Authority, P.L. 96-448 (Wyoming)* (Feb. 14, 1983); Ex Parte No. 388 (Sub-No. 28), *State Intrastate Rail Rate Authority —P.L. 96-448 (Pennsylvania)* (June 13, 1983); Ex Parte No. 388 (Sub-No. 21), *State Intrastate Rail Rate Authority—New Jersey* (Oct. 3, 1983).

[5] At the state's option, intrastate rate regulation can also be terminated altogether. *See* Ex Parte No. 388, *State Intrastate Rail Rate Authority—P.L. 96-448*, 365 I.C.C. 700, 700 (1982).

[6] The Staggers Act was enacted in response to Congress' finding that the nation's railroads were in a serious state of decline. *See* S. Rep. No. 470, 96th Cong., 1st Sess. 3 (1979). This decline was caused at least in part by pervasive federal and state regulation of the industry, which had its roots in an era when railroads were dominant in the transportation arena and wielded great economic power. Although the economic power of railroads had diminished sharply by the early 1970s, strict regulation of railroad rates and practices continued, leaving the railroads unable to compete with other, less heavily regulated modes of transportation. In the Staggers Act, and particularly in sections 201, 202, and 203, Congress made a deliberate policy choice to release the industry from pervasive rate regulation and to permit railroads to set most rates crimination against, interstate commerce. *See* pp. 5-6 *infra*.

As the court below found, Congress concluded in passing the Staggers Act that growing competition from trucks, barges, and other forms of transportation would control rates more effectively than bureaucratic regulation, and that rate flexibility would also

report on the bill that became the Staggers Act, for example, the conference committee stated that the purpose of section 214 was "to ensure that the price and service flexibility and revenue adequacy goals of the Act are not undermined by state regulation of rates, practices, etc., which [is] not in accordance with these goals." H.R. Rep. No. 1430, 96th Cong., 2d Sess. 106 (1980).

Under the former regulatory scheme, the various states exercised independent jurisdiction over rates charged by interstate railroads for transportation entirely within a single state.[7] Congress found, however, that this state regulation resulted in substantial losses to interstate rail carriers, both because of the lack of uniformity in regulation and because of the delays inherent in the system.[8] In the words of the House Commerce Committee:

> Under existing law, intrastate traffic is initially under a different regulatory requirement than interstate traffic. For example, requests for rate increases may be denied by state commissions using standards other than those applied by the [Interstate Commerce] Commission. While these requests may eventually be appealed to the Commission and ultimately granted, the time lag involved may still result in a loss of revenue.

H. R. Rep. No. 1035, 96th Cong., 2d Sess. 61 (1980), *reprinted in* 1980 U.S. Code Cong. & Ad. News 3978,

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enable the nation's railroads to earn revenues necessary to sustain their long-term operations. *See Texas v. United States*, 730 F.2d 339, 344-45 (5th Cir. 1984), reprinted in Appendix A to the Petition for Certiorari, at A2-A4.

The opinion below will hereafter be cited as follows: *Texas v. United States*, 730 F.2d at ——, Pet. App. at ——. Citations to the Petition itself will be in the form: Pet. at ——.

[7] Since 1914, however, state intrastate rate decisions have been subject to oversight by the ICC to prevent burdens on, or discrimination against, interstate commerce. *See* pp. 5-6 *infra*.

[8] *See Texas v. United States*, 730 F.2d at 346, Pet. App. at A6.

4006. The committee concluded that the rate disparity caused by state regulation constituted a significant revenue drain on the interstate rail industry—amounting to $400 million in 1977. *Id.*

Congress' efforts in this area were premised on nearly six decades of experience with the potential conflict between state and federal regulation of railroad rates. As early as 1914, this Court recognized the ICC's jurisdiction to order intrastate rates raised where the disparity between the intrastate and interstate rates constituted unlawful discrimination between localities. *Houston, East & West Texas Railway v. United States* (*Shreveport Rate Cases*), 234 U.S. 342 (1914).

Six years later, Congress specifically conferred on the ICC the power to prescribe intrastate rates whenever the state-imposed rate caused "any undue, unreasonable, or unjust discrimination against interstate or foreign commerce." Transportation Act of 1920, ch. 91, § 416(4), 41 Stat. 456, 484 (originally codified at 49 U.S.C. § 13(4)). This Court upheld the constitutionality of that provision in *Railroad Commission v. Chicago, Burlington & Quincy Railroad*, 257 U.S. 563 (1922), stating that Congress "can impose any reasonable condition on a State's use of interstate carriers for intrastate commerce it deems necessary or desirable." *Id.* at 590.

In the ensuing decades, Congress gradually increased federal control over intrastate rates, first giving the ICC the power to investigate and take action on any disparity between intrastate and interstate rates without waiting for the state regulatory authority to act in the first instance,[9] and later conferring on the ICC "exclusive authority" over a request for an intrastate rate increase if

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[9] Transportation Act of 1958, § 4, Pub. L. No. 85-625, 72 Stat. 568, 570.

a state failed to act upon such a request within 120 days.[10]

Section 214 is the culmination of congressional efforts in this area and represents Congress' acknowledgement of the failure of the former scheme to prevent intrastate regulation from draining a disproportionate share of the revenues of interstate carriers. In the Staggers Act, Congress exercised its power to preempt state authority and to require the states to adhere to federal standards as a condition of continued regulation. Both the district court and the court of appeals upheld this exercise of congressional power without difficulty.

REASONS FOR DENYING THE WRIT

In urging this Court to grant certiorari, the petitioners do not—and cannot—point to any error by the court of appeals in applying this Court's constitutional standards, nor to any conflict among the federal courts in interpreting those standards in similar cases. Indeed, far from demonstrating a decisional conflict, petitioners have highlighted the remarkable uniformity in the recent precedents of this Court regarding Congress' preemption power.

Unable to show either a substantial conflict with this Court's decisions or a conflict among the circuits, petitioners are obliged to argue, albeit somewhat obliquely, that this Court should revise its established Commerce Clause and Tenth Amendment doctrines in order to overturn the congressional policy embodied in section 214 of the Staggers Act.[11] Petitioners urge this Court to aban-

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[10] Railroad Revitalization & Regulatory Reform Act of 1976, ("4-R Act"), Pub. L. No. 94-210, § 210, 90 Stat. 31, 47 (current version at 49 U.S.C. § 11501(d)(1) (Supp. V 1981)).

[11] Petitioners originally alleged, in addition, that other provisions of the Act constituted a compensable "taking" under the Fifth Amendment. The court of appeals rejected that argument,

don the rational basis test traditionally used in evaluating the constitutionality of statutes enacted under the commerce power. Pet. at 4-7. They further ask this Court to broaden the reach of the Tenth Amendment to invalidate congressional preemption of state regulation of private conduct, *id.* at 7-15, a position recently and specifically rejected by this Court. Because petitioners have presented no arguments that would justify such a radical revision of this Court's existing doctrines, the petition for writ of certiorari should be denied.

I. PETITIONERS ARE ASKING THIS COURT TO OVERRULE COMMERCE CLAUSE PRINCIPLES UNANIMOUSLY ENDORSED IN THE 1981 *HODEL* CASES

Petitioners allege to this Court that "the Fifth Circuit was in error in using the 'rational basis' test" in its Commerce Clause analysis. Pet. at 4. But as the court below noted, petitioners were requesting it to "depart from accepted commerce clause reasoning in adjudging the validity of section 214." *Texas v. United States*, 730 F.2d at 349, Pet. App. at A11. The court rejected that invitation, correctly explaining that the traditional role of the judiciary in Commerce Clause analysis is to "defer to a congressional finding that a regulated activity substantially affects interstate commerce, as long

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Texas v. United States, 730 F.2d at 358-59, Pet. App. at A29, and petitioners do not raise that issue in their present petition.

In the court below petitioners also claimed that section 214 violates the Guaranty Clause of Art. 4, section 4 of the Constitution. The court of appeals rejected that argument out of hand. *Id.* at 358, Pet. App. at A28. While petitioners mention their Guaranty Clause theory in the Questions Presented section of their petition for certiorari, they press this argument only obliquely. *See* Pet. at 15. In any case, such a claim is wholly meritless. A state cannot shield its citizens from federal preemption simply by setting up a state elective body to govern the activities Congress wishes to reach. A similar claim was dismissed by this Court without discussion in *FERC v. Mississippi*, 456 U.S. 742, 753 (1982).

as there is any rational basis for such a finding." *Id.* at 348, Pet. App. at A10.

Applying this standard, the court had no difficulty concluding that "[s]ection 214 of the Staggers Act clearly passes constitutional muster under the 'minimum scrutiny' test required by accepted commerce clause analysis." *Id.* at 348, Pet App. at A11.[12] This decision was mandated by the clear constitutional standards articulated by this Court. Petitioners do not argue that the court of appeals should have applied those standards differently; rather they argue that the court should have applied different standards.

In fact, petitioners apparently want this Court to overrule its decisions in a pair of 1981 cases strikingly similar to the present controversy. *Hodel v. Virginia Surface Mining & Reclamation Association*, 452 U.S. 264 (1981); *Hodel v. Indiana*, 452 U.S. 314 (1981). In those cases this Court was called upon to examine the constitutionality of the Surface Mining Control and Reclamation Act. That Act preempted the states' authority to regulate strip mining in favor of federal regulation, but granted the states the option to continue to regulate in conformity with federal standards. In upholding the statute, this Court reaffirmed the propriety of the rational basis test in Commerce Clause analysis. "The court must defer to a congressional finding that the regulated activity affects interstate commerce, if there is any rational basis for such a finding." *Hodel v. Virginia Surface Mining*, 452 U.S. at 276. "A court may invalidate legislation enacted under the Commerce Clause only if it is clear that there is no rational basis for a congressional finding that

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[12] The court of appeals stated: "The information presented to Congress during its consideration of the Staggers Act furnished ample evidence that independent rate regulation of the intrastate rates of interstate carriers was imposing substantial costs upon those carriers." *Texas v. United States*, 730 F.2d at 349, Pet. App. at A11.

the regulated activity affects interstate commerce . . . ." *Hodel v. Indiana*, 452 U.S. at 323-24.

Petitioners renew their attack on "rational basis" analysis in their present request for certiorari, arguing that Congress' commerce power is less extensive when Congress is engaging in economic regulation than it is when civil rights are at stake, and that in cases involving economic regulation the rational basis test should be abandoned in favor of a "balancing" test. Pet. at 4, 11. Although they cite no authority for such a policy, and indeed note that it conflicts with this Court's established doctrine, Pet. at 6, petitioners apparently believe that deference to state sovereignty requires this Court to restrict the rational basis test to statutes enacted pursuant to the Fourteenth Amendment.

Such an argument confuses the constitutional limits on Congress' exercise of its commerce power with the constraints imposed upon states when their laws incidentally burden interstate commerce. The court below so found and rejected petitioners' suggestion as lacking "both supporting authority and merit." *Texas v. United States*, 730 F.2d at 350, Pet. App. at A14. The court concluded that Congress, unlike the states, has plenary power to regulate interstate commerce, and it would thus be improper to balance its exercise of that power against other interests. Citing several recent decisions of this Court that apply the rational basis test in Commerce Clause analysis, including *FERC v. Mississippi*, 456 U.S. at 754 and *Hodel v. Indiana*, 452 U.S. at 323-24, the Fifth Circuit stated, "If an activity affects interstate commerce substantially, the power of Congress to regulate is not affected by whether Congress is engaging in economic regulation or seeking to protect civil rights." *Texas v. United States*, 730 F.2d at 351, Pet. App. at A16. That is the established doctrine of this Court. Petitioners have supplied no valid reasons why it should be abandoned.

II. *NATIONAL LEAGUE OF CITIES* IMMUNITY SHOULD NOT BE EXPANDED TO REACH SECTION 214 OF THE STAGGERS ACT

Petitioners also claim that section 214 should be invalidated under the Tenth Amendment. Petitioners asked the court below to ignore the clear lessons of recent decisions of this Court and to broaden the doctrine of *National League of Cities v. Usery*, 426 U.S. 833 (1976), to bar the preemption of state regulation of intrastate rates. The court properly refused to do so.[13]

Again this Court's decisions in the *Hodel* cases are directly controlling. There the Court made clear that a scheme preempting state regulation but granting optional authority to regulate in accordance with federal guidelines does not offend the Tenth Amendment principles of *National League of Cities v. Usery*: "Congress could constitutionally have enacted a statute prohibiting any state regulation of surface coal mining. We fail to see why the Surface Mining Act should become constitutionally suspect simply because Congress chose to allow the States a regulatory role." *Hodel v. Virginia Surface Mining*, 452 U.S. at 290. *See also id.* at 288-93; *Hodel v. Indiana*, 452 U.S. at 330.[14]

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[13] Petitioners seem to assert that the recent decision of the ICC to deny permanent certification to the Railroad Commission of Texas ("RCT") somehow enhances their Tenth Amendment claim. Pet. at 13-14. To the contrary, that decision demonstrates both the correct application of the statute, and the need for uniform federal standards in this area. In any event, the validity of the ICC's decision on certification of the RCT is not before this Court, inasmuch as the present action is a facial challenge to the constitutionality of the statute. Indeed, the RCT's petition for review of the ICC's decision denying its request for certification is currently pending before the United States Court of Appeals for the District of Columbia Circuit. *Railroad Commission v. United States*, No. 84-1180 (D.C. Cir., filed May 14, 1984).

[14] One year later, in *FERC v. Mississippi*, this Court confirmed these same principles in the context of a federal statute affecting the states' regulatory authority over electric utilities. On the Com-

Petitioners argue here that the Staggers Act regulates the states as states and deprives them of their sovereignty [15] by requiring that any state rate regulation be governed by federal standards. But there can be no question that the Staggers Act does not violate the *National League of Cities* test. The sole case in which this Court has found that test to be met was *National League of Cities* itself, where Congress attempted to require the state to structure its own employment policies in accordance with federal standards.[16] Petitioners assert, with-

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merce Clause question the Court was clear: "Our inquiry, then, is whether the congressional findings have a rational basis." 456 U.S. at 755-56. The Court also confirmed the Tenth Amendment analysis of the *Hodel* cases and, in fact, went "one step beyond *Hodel*," approving a congressional scheme that required States to expend resources in considering the adoption of suggested federal standards. *Id.* at 764. Here, of course, the statute in no way requires any state to expend resources unless the state voluntarily chooses to do so. *See* note 4 *supra*. Moreover, if a state opts not to regulate, the very same federal standards and procedures will be applied by the ICC. 49 U.S.C. § 11501(b). Just as in *Hodel*, the Staggers Act gives the states the option to regulate not just in a preemptible area, but in an area that has actually been preempted.

While, unlike the *Hodel* cases, the decision in *FERC* was not unanimous, even the dissenting justices in *FERC* agreed with the *Hodel* principles. *See id.* at 775 (Powell, J., concurring in part and dissenting in part) and *id.* at 782-83 (O'Connor, J., concurring in part and dissenting in part). In fact, the dissenting Justices made clear that where, as here, the federal government has already filled any void left open by a state's decision not to regulate, no serious Tenth Amendment issue is raised. *Id.* at 781 n.8 (O'Connor, J., concurring in part and dissenting in part).

[15] Under the narrow *National League of Cities* test, the Tenth Amendment limits Congress' commerce power only to the extent the challenged legislation (1) regulates states as states, (2) addresses matters that are indisputably attributes of state sovereignty, and (3) would impair the states' ability to structure integral operations in areas of traditional governmental functions. *See Hodel v. Virginia Surface Mining*, 452 U.S. at 287-88.

[16] At the end of last Term, this Court called for reargument in *Garcia v. San Antonio Metropolitan Transit Authority*, directed to

out support, that the Staggers Act similarly regulates states as states, arguing that it compels the states to "perform as extensions of the Federal government." Pet. at 13. However, this is simply a misreading of the statute. Section 214 does not compel the states to do anything. The Act merely preempts an area undoubtedly subject to federal authority, giving the states the opportunity, if they so desire, to exercise regulatory authority under uniform federal guidelines. This is precisely the type of statutory system approved by this Court in the *Hodel* cases. Since the court of appeals properly applied this Court's recent and unanimous precedents, it is difficult to see how its decision can be said to be in error.

The Alabama Public Service Commission ("APSC") and NARUC have submitted a brief[17] in which they argue that the provisions of section 214 are more intrusive than those involved in the *Hodel* or *FERC* cases, and that this supposed level of intrusiveness is a key consideration in Tenth Amendment analysis. "[E]valuation of intrusiveness, however, is simply irrelevant to the constitutional inquiry." *FERC v. Mississippi*, 456 U.S. at 785-86 (O'Connor, J., concurring in part and dissenting in part); *see also id.* at 768 n.30 (opinion of the Court). The relative intrusiveness of terms imposed by Congress as conditions of state participation in preempted areas is without significance. Indeed, as this Court noted in *FERC*, Congress' commerce power pre-

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the issue whether "the principles of the Tenth Amendment as set forth in *National League of Cities* . . . should be reconsidered," 104 S. Ct. 3582, 3582-83 (1984). Regardless of the outcome of that case, however, it is clear that the principles of *National League of Cities* have no application here, since petitioners have not shown, and cannot show, that section 214 regulates the states as states.

[17] Respondent AAR understands that the APSC and NARUC, the proponents of the proposed *amicus curiae* brief, intend to move this Court for leave to submit their brief without consent of all parties. Without implying anything as to the merits of this request, respondent will here comment briefly on the major issue raised in the brief, which was initially filed on August 27, 1984.

empts inconsistent state regulation even where "Congress exercises its authority 'in a manner that displaces the States' exercise of their police powers,' . . . or in such a way as to 'curtail or prohibit the States' prerogatives to make legislative choices respecting subjects the States may consider important' . . . or, to put it still more plainly, in a manner that is 'extraordinarily intrusive.'" *Id.* at 767 (citations omitted).

Furthermore, even if the intrusiveness argument might have some merit in the abstract, it is inapposite in the present case. Under the regulatory scheme of section 214, a state is subject to the supposedly "intrusive" federal standards only if it chooses to regulate. A state that believes that conforming its regulatory policies to federal standards would impair its sovereignty is free to withdraw and redirect its regulatory energies to non-preempted areas.[18] As this Court stated long ago, even "[i]f Congress enacted [the law] with the ulterior purpose of tempting [the states] to yield, that purpose may be effectively frustrated by the simple expedient of not yielding." *Massachusetts v. Mellon*, 262 U.S. 447, 482 (1923).

III. THE OTHER COURTS THAT HAVE CONSIDERED THE CONSTITUTIONALITY OF SECTION 214 AGREE WITH THE ANALYSIS OF THE COURT BELOW

Nor is there any conflict in the lower federal courts regarding the application of this Court's constitutional standards to section 214. Two other federal courts have addressed the same question; both agree with the Fifth Circuit's analysis and have upheld the constitutionality of the Act.

In *Montana ex rel. Montana Department of Agriculture v. United States*, No. CV-81-29-GF (D. Mont. Sept.

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[18] Sixteen states have already chosen this option. *See supra* note 4.

9, 1983),[19] decided prior to the decision below, the district court upheld the constitutionality of section 214 against a complaint virtually identical to the one filed here. Applying the principles of the *Hodel* cases, the *Montana* court found that the Act was within the commerce power, since Congress' finding that the intrastate rates of interstate carriers can affect interstate commerce was supported by a rational basis. App. at 2a-3a. The court also relied on the *Hodel* cases to reject the state's Tenth Amendment challenge to the Act. App. at 3a-4a.

In the other case, *Alabama Electric Cooperative, Inc. v. United States*, No. 81-619-N (M.D. Ala. May 15, 1984),[20] the district court rejected another identical constitutional challenge to the Staggers Act, citing the Fifth Circuit's decision in the present case as "persuasive and determinative of the issues raised in this action." App. at 7a.

Petitioners have cited no cases to the contrary from any jurisdiction. The absence of any conflict demonstrates not only the utter lack of merit to petitioners' claims, but also the lack of any need for review by this Court. The established constitutional standards controlling this case were properly applied by the court of appeals. There is no remaining issue warranting review.

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[19] This unpublished decision is reprinted in the Appendix to this Brief at App. 1a to 5a. An appeal from this decision, primarily addressed to issues not raised herein, is pending before the United States Court of Appeals for the Ninth Circuit. *Montana v. United States*, No. 83-4246 (9th Cir., argued June 4, 1984).

[20] This unpublished decision is reprinted in the Appendix to this Brief at App. 6a to 7a. No appeal has been taken in the *Alabama* case.

CONCLUSION

For these reasons, the petition for a writ of certiorari should be denied.

Respectfully submitted,

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September 10, 1984

APPENDIX

APPENDIX

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
GREAT FALLS DIVISION

No. CV-81-29-GF

STATE OF MONTANA, EX REL. MONTANA DEPARTMENT OF AGRICULTURE, MONTANA WHEAT RESEARCH AND MARKETING COMMITTEE, and MONTANA DEPARTMENT OF COMMERCE,

Plaintiffs,

vs.

UNITED STATES OF AMERICA and the INTERSTATE COMMERCE COMMISSION,

Defendants.

MEMORANDUM AND ORDER

Plaintiffs instituted the present action requesting this court to declare the Staggers Rail Act of 1980, 49 U.S.C. §§ 10101a, *et seq.*, unconstitutional on its face. The matter is currently before the court upon motion of the defendants requesting the court to enter judgment in their favor pursuant to Rule 56 of the Federal Rules of Civil Procedure.[1] Having exhaustively reviewed the merits of the arguments advanced by the parties with respect to the defendants' motion, the court finds it appropriate to enter judgment in the defendants' favor.

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[1] The defendants have filed a motion requesting the court to enter a judgment on the pleadings. Rule 12(c), Fed. R. Civ. P. In accordance with Rule 12(b), the motion is appropriately treated as a motion for summary judgment, since matters outside the pleadings themselves have been presented for consideration.

SUMMARY

The plaintiffs predicate their position upon the assertions that (i) Congress exceeded the power granted it under the Commerce Clause in enacting the Staggers Rail Act; (ii) the Staggers Rail Act infringes upon the rights reserved by the States under the Tenth Amendment to the United States Constitution; (iii) the Staggers Rail Act violates the Just Compensation Clause of the Fifth Amendment to the United States Constitution; and (iv) the Staggers Rail Act denies them equal protection of the law as guaranteed by the Fifth Amendment to the United States Constitution.

DISCUSSION

I.

In assessing the plaintiffs' contention that Congress, in enacting the Staggers Rail Act, exceeded the plenary power granted it by the Commerce Clause, the court finds the rationale espoused by the Supreme Court in the decision of *Hodel v. Virginia Surface Mining and Reclamation Assn.*, 452 U.S. 264 (1981), dispositive. *Hodel* clearly established that the task of a court presented with the question of whether a particular exercise of congressional power is valid under the Commerce Clause is relatively narrow. 452 U.S. at 276. A court may invalidate such legislation only "if it is clear that there is no rational basis for a congressional finding that the regulated activity affects interstate commerce or that there is no reasonable connection between the regulatory means selected and the asserted ends." *Hodel v. Indiana*, 452 U.S. 314, 323-324 (1981).

On the basis of the record in this matter, the court finds that it is beyond dispute that there exists a rational basis upon which to conclude that intrastate railroad rates affect interstate commerce. *See*, 49 U.S.C. § 10101. Accordingly, this court must defer to the congressional finding that intrastate railroad rates affect interstate

commerce. *Hodel v. Virginia Surface Min. and Recl. Assn.*, 452 U.S. at 276. This established, the only remaining inquiry for this court to undertake is whether the means chosen by Congress to regulate intrastate rates are reasonably adapted to the constitutionally permissible objective sought by Congress in enacting the Staggers Rail Act, *i.e.*, improving the financial condition of the nation's railroad industry. *Id.*

The Staggers Act was designed to rectify the adverse financial effect that varying state railroad regulations had on interstate transportation. *See*, House Report No. 96-1035 96th Congress, 2nd Session, pp. 129-130. The format established by the Staggers Rail Act to regulate intrastate rates is reasonably related to the objectives of Congress to alleviate the adverse effects of varying intrastate rates in that it obviously is designed to provide a semblance of uniformity. The plaintiffs have failed to advance a convincing argument to the contrary. The presumption of constitutionality which this court must afford the Staggers Rail Act, as a legislative act which "adjusts the burdens and benefits of economic life. . .", *Hodel v. Indiana*, 452 U.S. at 323, is not overcome by the arguments submitted by the plaintiffs. The plaintiffs merely point out the adverse effects the Act has upon the State of Montana, which, it alleges, were not considered by Congress. Such an argument goes to the wisdom of Congress' political judgment, not the constitutional validity of the particular act.

II.

The plaintiffs' Tenth Amendment challenge to the validity of the Staggers Rail Act is also effectively dispelled by the rationale espoused in *Hodel v. Virginia Min. and Recl. Assn.*, 452 U.S. at 283-293. Since the Act regulates private persons and businesses and not the "States as States", there is no Tenth Amendment violation. The mere fact that the Act may displace the State's

exercise of their "police power" is irrelevant for Tenth Amendment purposes. 452 U.S. at 291-292.

III.

The issue whether certain provisions of the Staggers Rail Act violates the Just Compensation Clause of the Fifth Amendment is not ripe for judicial resolution. The plaintiffs' pleading merely advances a facial challenge to the constitutional validity of the Staggers Rail Act. The plaintiffs have not presented a concrete controversy essential to the invocation of the Just Compensation Clause. *See, Hodel v. Virginia Surface Min. and Recl. Assn.*, 452 U.S. at 293-297. The "mere enactment" of the Staggers Rail Act does not constitute a "taking" within the meaning of the Fifth Amendment. *Id.*

IV.

The plaintiffs' equal protection challenge must be rejected as without merit. The claim does not involve the exercise of a fundamental right or a suspect class. Accordingly, the Act may be invalidated on equal protection grounds only if the varying treatment of different groups or persons is so unrelated to the achievement of any combination of legitimate purposes that it can only be concluded that the legislative action was irrational. *See, Vance v. Bradley*, 440 U.S. 93, 97 (1979); *Massachusets Bd. of Retirement v. Murgia*, 427 U.S. 307, 312 (1976).

The plaintiffs' equal protection challenge is, again, a facial challenge. Therefore, in determining whether there exists a rational basis for the varied treatment afforded different groups of shippers under the Act, the court is limited to assessing the statute on its face. The plaintiffs, however, have presented no legal argument in support of their claim. Furthermore, this court is unable to conclude that there does not exist any conceivable basis to support the varied treatment. *See, Madden v. Kentucky*, 309 U.S. 83, 88 (1940).

The gist of the plaintiffs' argument is that the Staggers Rail Act unfairly discriminates against Montana shippers. That argument, however, calls into question the constitutional validity of the Act as applied; an issue not properly before this court.

For the reasons set forth herein,

IT IS ORDERED that the defendants' motion for summary judgment be, and the same hereby is, GRANTED.

The Clerk is directed to enter JUDGMENT in favor of the defendants.

DATED this 9 day of September, 1983.

/s/ Paul G. Hatfield
PAUL G. HATFIELD
United States District Judge

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE MIDDLE DISTRICT OF ALABAMA, NORTHERN DIVISION

Civil Action No. 81-619-N

ALABAMA ELECTRIC COOPERATIVE, INC., *et al.*,
Plaintiff,

ALABAMA PUBLIC SERVICE COMMISSION, *et al.*,
Plaintiff-Intervenors,

v.

UNITED STATES OF AMERICA, *et al.*,
Defendants.

ASSOCIATION OF AMERICAN RAILROADS,
Defendant-Intervenor.

OPINION

This cause is now before the court on the plaintiff-intervenors' November 17, 1983, motions for summary judgment and the defendants' and defendant-intervenor's November 16, 1983, motions for summary judgment. The plaintiff-intervenors, the Alabama Public Service Commission and its members, the State of Alabama, Alabama Attorney General Charles Graddick, and the National Association of Regulatory Utility Commissioners, have brought this action seeking a declaration that portions of the Staggers Rail Act, P.L. 96-448, are unconstitutional. Specifically, they contend that §§ 201, 202, 203, and 214 of the Act violate the Commerce Clause, the

Tenth Amendment and the Fifth Amendment. Similar contentions were rejected by the Fifth Circuit Court of Appeals in *Texas v. United States*, No. 82-1693 (5th Cir. April 23, 1984). Although not binding, the court does find the reasoning of that case persuasive and determinative of the issues raised in this action. Therefore, the court is of the opinion that the defendants' and defendant-intervenor's motions for summary judgment are due to be granted, and that the plaintiff-intervenors' motions for summary judgment are due to be denied. An appropriate judgment will be entered in accordance with this opinion.

DONE, this the 15th day of May, 1984.

/s/ Myron H. Thompson
United States District Judge

MEMBERS OF THE ASSOCIATION OF AMERICAN RAILROADS

FULL MEMBER ROADS (U.S. LINES)

Akron, Canton & Youngstown Railroad Company
Alton & Southern Railway Company
Atchison, Topeka & Santa Fe Railway Company

Baltimore & Ohio Railroad Company
    Curtis Bay Railroad Company
    Staten Island Railroad Corporation
Baltimore & Ohio Chicago Terminal Railroad Company
Bangor & Aroostook Railroad Company
    Van Buren Bridge Railroad
Belt Railway Company of Chicago
Bessemer & Lake Erie Railroad Company
Birmingham Southern Railroad Company
Burlington Northern Railroad Company

[Canadian Pacific Limited—lines operated in U.S.]:

    Canadian Pacific lines in Maine
    Canadian Pacific lines in Vermont
Chesapeake & Ohio Railway Company
    Covington & Cincinnati Elevator Railroad & Transfer & Bridge Company
Chicago & Illinois Midland Railway Company
Chicago & North Western Transportation Company
Chicago & Western Indiana Railroad Company
Chicago, Milwaukee, St. Paul & Pacific Railroad Company
Colorado & Southern Railway
Consolidated Rail Corporation

Denver & Rio Grande Western Railroad Company
Detroit & Mackinac Railway Company
Duluth, Missabe & Iron Range Railway Company

Elgin, Joliet & Eastern Railway Company

Fort Worth & Denver Railway

Galveston, Houston & Henderson Railroad Company
[Grand Trunk Corporation—and other lines in the U.S. indirectly controlled by the Canadian National Railways]:

Grand Trunk Western Railroad Company
Detroit, Toledo & Ironton Railroad Company
Central Vermont Railway, Inc.
Duluth, Winnipeg & Pacific Railway Company
[Canadian National Railways]:

Lines in Michigan
Lines in New England
Lines in New York
Lines in Vermont

Green Bay & Western Railroad Company

Houston Belt & Terminal Railway Company

Illinois Central Gulf Railroad Company
Chicago & Illinois Western Railroad Company
Waterloo Railroad

Kansas City Southern Railway Company
Arkansas & Western Railway Company
Fort Smith & Van Buren Railway Company
Kansas & Missouri Railway & Terminal Company

Kentucky & Indiana Terminal Railroad

Lake Superior & Ishpeming Railroad Company
Lake Terminal Railroad Company
Louisiana & Arkansas Railway Company

McCloud River Railroad Company
McKeesport Connecting Railroad Company
Maine Central Railroad Company
Portland Terminal Company
Manufacturers Railway Company
Metro North Commuter Railroad Company
Missouri-Kansas-Texas Railroad Company including
Beaver, Meade & Englewood Railroad Company

Missouri Pacific Railroad Company
- Brownville & Matamoras Bridge Terminal Company
- Chicago Heights Terminal Transfer Company
- Doniphan, Kensett & Searcy Railway Company
- Weatherford, Mineral Wells and Northwestern Railway Company

National Railroad Passenger Corporation (AMTRAK)
Newburgh & South Shore Railway Company
Norfolk & Western Railway Company
- Chesapeake Western Railway Company
- Lake Erie & Fort Wayne Railroad Company
- Lorain & West Virginia Railway Company
- New Jersey, Indiana & Illinois Railroad Company
- Norfolk, Franklin & Danville Railway Company

Peoria & Pekin Union Railroad Company
Pittsburg & Shawmut Railroad Company
Pittsburgh & Lake Erie Railroad Company
- Montour Railroad Company
- Youngstown & Southern Railway Company

Prescott & Northwestern Railroad Company

Richmond, Fredericksburg & Potomac Railroad Company

St. Louis Southwestern Railway Company
Seaboard System Railroad, Inc.
- Gainesville Midland Railroad Company

Soo Line Railroad Company
- Sault Ste. Bridge Company

Southern Pacific Transportation Company
- Holton Inter-Urban Railway Company
- Northwestern Pacific Railroad Company
- Petaluma & Santa Rosa Railroad Company
- Visalia Electric Railroad Company

Southern Railway System
- Alabama Great Southern Railroad Company
- Algers, Winslow & Western Railway Company
- Atlantic & East Carolina Railway Company
- Camp Lejeune Railway Company

Carolina and Northwestern Railway Company
Central of Georgia Railroad Company
Cincinnati, New Orleans & Texas Pacific Railway Company
Georgia Northern Railway Company
Georgia Southern & Florida Railway Company
Interstate Railroad Company
Live Oak, Perry & South Georgia Railway Company
Louisiana Southern Railway Company
State University Railroad Company
Tennessee, Alabama & Georgia Railway Company
Tennessee Railway Company

Texas Mexican Railway Company

Union Pacific Railroad Company
Spokane International Railroad Company
Mt. Hood Railway Company
Union Railroad Company (Pittsburgh)

Vermont Railway, Inc.

Western Maryland Railway Company
Western Pacific Railroad Company
Sacramento Northern Railway Company
Tidewater Southern Railway Company
Western Railway of Alabama
Atlanta & West Point Rail Road Company
Winston-Salem Southbound Railway
High Point, Thomasville & Denton Railroad

SPECIAL CANADIAN AND MEXICAN MEMBER ROADS

CANADIAN LINES (in Canada)

Algoma Central Railway
British Columbia Hydro & Power Authority
British Columbia Railway
Canadian National Railways
Canadian Pacific Limited
Ontario Northland Railway
Toronto, Hamilton & Buffalo Railway
White Pass & Yukon Corp. Ltd.

MEXICAN LINES (in Mexico)

Chihuahua Pacific Railway Company
[Direction General de Ferrocarriles en Operacion]:

Ferrocarril Sonora-Baja California, S.A. de C.V.
Ferrocarriles Unidos del Sureste, S.A. de C.V.
Ferrocarril del Pacifico, S.A. de C.V.
National Railways of Mexico

ASSOCIATE MEMBERS

(55 Domestic—19 Foreign)

Alaska Railroad (ALASKA)
Aliquippa & Southern Railroad Company
American Refrigerator Transit Company
Apalachicola Northern Railroad Company

Belfast & Moosehead Lake Railroad Company
Boston & Maine Corporation
Springfield Terminal Railway

California Western Railroad
Centromen Puru Incorporated
Chestnut Ridge Railway
Chicago Short Line Railway Company
Chicago South Shore & South Bend Railroad
Chicago, West Pullman & Southern Railroad Company
Chilean State Railways (CHILE, S.A.)
Cities Service Company Railroad
Cliffs Western Australian Mining Co. Pty. Ltd. (AUSTRALIA)
Colorado & Wyoming Railway Company
Cuyahoga Valley Railway Company

Dardenelle & Russellville Railroad Company
Delaware & Hudson Railway Company
Greenwich & Johnsville Railway Company
Delray Connecting Railroad Company
Devco Railway (Cape Breton Dev. Corp.—Coal Div.) (CANADA)
Duluth & Northwestern Railroad Company

East Erie Commercial Railroad
East Jersey Railroad & Terminal Company
East St. Louis Junction Railroad Company
Empresa Minera Del Centro Del Peru Railways (PERU, S.A.)
Essex Terminal Railway (CANADA)

Fepasa-Ferrovia Paulista (BRAZIL)
Fruit Growers Express Company

Genesee & Wyoming Railroad Company
Grafton & Upton Railroad Company
Graysonia, Nashville & Ashdown Railroad Company
Great Western Railway Company

Hamersley Iron Pty. Ltd. (WESTERN AUSTRALIA)
Hartford & Slocomb Railroad Company
Hillsdale County Railway Company, Inc.

India, Gov't. of: Ministry of Railways (INDIA)

Japanese National Railways (JAPAN)

Korean National Railroad (KOREA)

LaSalle & Bureau County Railroad Company
Lenawee County Railroad Company, Inc.
Long Island Rail Road Company
Louisiana & North West Railroad Company

Manufacturers' Junction Railway Company
Maryland & Pennsylvania Railroad Company
Metro North Commuter Railroad Company
Michigan Northern Railway Company, Inc.
Middletown & Hummelstown Railroad Company
Minnesota, Dakota & Western Railway Company
Monongahela Connecting Railroad Company

New Orleans Public Belt Railroad
Northeast Illinois Railroad Corporation

Pacific Fruit Express Company
Pearl River Valley Railroad Company
Pickens Railroad-National Railway Utilization Corp.
Port Authority of New York & New Jersey (The)
Providence & Worcester Company
Public Transport Commission of New South Wales (AUSTRALIA)

Rede Ferroviaria Federal S.A. (BRAZIL)
River Terminal Railway Company

Roberval & Saguenay Railway Company (CANADA)
Roscoe, Snyder & Pacific Railway Company

San Diego & Arizona Eastern Transportation Company
Sierra Railroad Company (California)
Somerset Railroad Corporation
South African Railways (REPUBLIC OF SOUTH AFRICA)
Southern Indiana Railway, Inc.
Spanish National Railways (RNFE) (SPAIN)

Taiwan Railway Administration (REPUBLIC OF CHINA)
Texas & Northern Railway Company

Upper Merion & Plymouth Railroad Company

Victoria A Minas Railway (BRAZIL)

Wabush Lake Railway Ltd. (CANADA)
Warwick Railway Company
Washington Terminal Company

Yancey Railroad Company